

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

COUNTRY ACRES FARM, INC.,

Defendant.

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) Civil Action No. _____
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COMPLAINT

1. The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

2. This is a civil action commenced pursuant to Sections 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d), seeking declaratory relief, any necessary injunctive relief, and the assessment of civil penalties against Country Acres Farm, Inc. ("Defendant"), for the discharge of pollutants into waters of the United States in or around Dixmont, Maine, in violation of the terms and conditions of a National Pollutant Discharge Elimination System ("NPDES") Permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342 and for violation of an Administrative Order issued pursuant to CWA Section 309(a), 33 U.S.C. § 1319(a).

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the District of Maine pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because the Defendant conducts business in this District, the subject property is located in this District, and the cause of action alleged herein arose in this District.

NOTICE

5. Notice of the commencement of this action has been provided to the State of Maine pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b).

THE PARTIES

6. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

7. Defendant Country Acres Farms, Inc. is a corporation organized under the laws of the State of Maine, with a business address of P.O. Box 758, Hampden, Maine 04444, and with its principal place of doing business at Moosehead Trail Road, Route 7, Dixmont, Maine 04932. Defendant operates a concentrated animal feeding operation (CAFO) at this location.

8. At all times relevant to the Complaint, Defendant operated and continues to operate the facility that is the subject of this Complaint.

STATUTORY BACKGROUND

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes unlawful the discharge of pollutants to waters of the United States except in compliance with, among other things, the terms and conditions of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. CWA Section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

11. CWA Section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, inter alia, "biological materials . . . and industrial . . . and agricultural waste discharges into water."

12. CWA Section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

13. CWA Section 502(14), 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance, including but not limited to . . . any concentrated animal feeding operation . . . from which pollutants are or may be discharged."

14. CWA Section 502(5), 33 U.S.C. § 1362(5), defines "person" to include "an individual [or] corporation."

15. CWA Section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA Section 301(a), 33 U.S.C. § 1311(a), or who violates any condition or limitation imposed in a NPDES permit issued under CWA Section 402, 33 U.S.C. § 1342.

16. CWA Section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA Section 301(a), 33 U.S.C. § 1311(a), or who violates any condition or limitation imposed in a NPDES permit issued under CWA Section 402, 33 U.S.C. § 1342, or who violates an Administrative Order issued pursuant to CWA Section 309(a), 33 U.S.C. § 1319(a).

GENERAL ALLEGATIONS

17. Defendant is a person under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

18. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that the Administrator of EPA may authorize a state to issue NPDES permits in accordance with the requirements of the CWA. On January 12, 2001, EPA authorized the State of Maine to implement the NPDES program in all the areas of the state outside of Indian country pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

19. On August 15, 2006, the Maine Department of Environmental Protection (“ME DEP”) issued Maine Pollutant Discharge Elimination System (“MPDES”) Permit No. ME0036821 (“the Permit”) to Defendant. The Permit authorizes Defendant to discharge certain pollutants, as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6), from a CAFO to Martin Stream (“the Stream”) and adjacent wetlands (both State of Maine Class A waterways), subject to effluent limitations and conditions contained in the Permit.

20. Special Condition A.1 of the Permit prohibits the discharge of process-generated wastewaters to Martin Stream and the adjacent wetlands. Process-generated wastewaters are defined in the Permit, in part, as:

“waste water directly or indirectly used in the operation of a feedlot for any or all of the following: spillage or overflow from animal watering systems; washing, cleaning or flushing pens, barns, manure pits or other feedlot facilities, feed storage facilities, direct contact swimming, washing or spray cooling of animals; and dust control and any precipitation which comes into contact with any manure, litter bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animal or direct products (e.g., milk).”

A true and correct copy of MPDES Permit No. ME0036821 is attached hereto as Exhibit A.

21. Process-generated wastewater is a “pollutant” under Section 502 (6) of the Clean Water Act, 33 U.S.C. § 1362(6).

22. The Permit authorizes the discharge of pollutants contained in storm water to Martin Stream and the adjacent wetlands, subject to the conditions of the Permit. Storm water is defined in the Permit as “storm water runoff or snow melt runoff that does not come into contact or co-mingle with process waste water” (emphasis added)

23. The Permit also requires the Defendant, among other things: to implement an operation and maintenance program that includes periodic visual inspection and maintenance of all manure storage and handling equipment and structure and all runoff management devices; to prevent discharges of pollutants to surface waters; to maintain sufficient freeboard^{1/} in the liquid manure storage structures (one foot for the old L-shaped lagoon and one foot for the new square lagoon); to develop and implement a Nutrient Management Plan in accordance with standards in the regulations of the Maine Department of Agriculture, Food and Rural Resources (“Maine DAFRR”); to notify ME DEP and ME DAFRR of discharges of process wastewater in accordance with Special Condition A. 3. of the Permit; to obtain and maintain a Livestock Operating Permit from the Maine DAFRR under Maine law; and to handle and dispose of dead animals in a manner that prevents contamination of surface waters and ground waters of the State of Maine.

24. Defendant’s dairy farm operations include several barns and two lagoons. These include: the old L-shaped lagoon (hereinafter referred to as the “old lagoon”); the new square lagoon (hereinafter referred to as the “new lagoon”); and a barn commonly referred to as the “new” barn. These areas constitute a part of the CAFO, as defined by federal regulation at 40

^{1/}“Freeboard” is the distance between the top of the liquid and solid wastes, and the top of the walls of the lagoon.

C.F.R. § 122.23 and by ME DEP regulation at Chapter 521, § 6. At Defendant's dairy farm an established drainage channel captures runoff from the wetland located behind the barns and lagoons and that channel discharges into Martin Stream. The CAFO, including the barns, the old lagoon, the new lagoon, and the drainage channel is a "point source" as defined by Section 502 (14) of the CWA, 33 U.S.C. § 1362 (14).

25. Discharges from the barns and lagoons at the Defendant's farm flow into the wetlands adjacent to Martin Stream and through the drainage channel to Martin Stream. Martin Stream flows into Plymouth Pond, and thence to Sebasticook Lake, Sebasticook River, Kennebec River and the Atlantic Ocean. Martin Stream, the adjacent wetlands, Plymouth Pond, Sebasticook Lake, Sebasticook River, Kennebec River, and the Atlantic Ocean are "waters of the United States" as defined in 40 C.F.R. § 122.2, and thereby navigable waters as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

26. Process-generated waste liquids from Defendant's milking operations continue to be added to the old lagoon. The continued addition of process-generated wastes without removing existing wastes from the old lagoon threatens to overtop the lagoon and discharge process-generated wastewater into the wetlands adjacent to Martin Stream and through the drainage channel to Martin Stream.

27. On October 10, 2006, staff of the ME DEP, responding to a citizen's complaint, observed that the drainage channel which captures runoff from the wetland behind the Defendant's barns was full of dark, silty, foul-smelling liquid. The foul-smelling liquid was slowly discharging into Martin Stream. The plume from this discharge was visible in the Stream, and extended downstream. The ME DEP inspector walked from the Stream along the drainage

channels towards the two lagoons (the old and new lagoon). The ME DEP inspector observed that the wetland was laced with a network of small channels and pools and observed evidence of contamination all along these small channels and pools between the Stream and the manure lagoons. Samples taken at the sample discharge point, where the wetland empties into Martin Stream, showed levels of ortho-phosphorous at 19,000 micrograms/liter; ammonia nitrogen at 290 milligrams/liter; Biochemical Oxygen Demand (BOD) at 340 milligrams/liter; Total Suspended Solids (TSS) at 660 milligrams/liter; and Fecal Coliform at 4500 coliform forming units/100 milliliters.

28. A significant discharge of untreated wastes and wastewater, containing manure, from Defendant's CAFO would cause widespread mortality to the fish population that lives in Martin Stream, as a result of heightened ammonia levels and the loss of dissolved oxygen in the water. The high solids content and high bacteria count of the discharge would make the receiving water unsafe for contact recreation and the high level of phosphorus will cause excess plant and algae growth which will interfere with contact recreation. The low dissolved oxygen and the accumulation of organic material will impair the macro-invertebrate community which is a critical source of food for the fish community. The accumulating organic material will also result in the loss of fish spawning habitat.

29. On or about October 2-7, 2006, workers transferred liquid manure from the new lagoon to the old lagoon, during which liquid wastes were spilled or leaked from piping. The piping consisted of stainless steel sections coupled together. The ME DEP inspector observed indications on the ground that leakage from the transfer pipe had occurred in multiple locations (places where grass had been pressed down by flows of dirty water, and black, mucky, foul-

smelling mud pools); observed a section of pipe with about a two-foot long longitudinal gash in it; and observed an individual pipe joint without a coupling. The ME DEP inspector advised a representative of the Defendant that leaking from the pipe into the wetlands was an illegal discharge.

30. On October 10, 2006, the inspector for ME DEP also noted evidence that liquid manure had been released from the rear of the “new” barn and had migrated into the wetlands adjacent to Martin Stream.

31. On October 30, 2006, ME DEP staff observed that liquid manure was being pumped from the old lagoon into the new lagoon. Shortly after the inspector’s arrival, the pumping operation was terminated. At the location of the pump, the ground was soaked with spray from leaks in the manure piping and several leaking joints in the transfer pipe had been wrapped in duct tape. Farther down the pipe, the inspector observed a stream of liquid manure still leaking out of a hole in the pipe, which had been wrapped in duct tape. Sufficient liquid manure had been released from this hole in the pipe to stain an area six feet wide and at least one foot deep as it flowed directly into the large drainage channel (which flows to Martin Stream). In addition, the inspector from ME DEP observed a pool of manure beside the “new” barn which was migrating down a bank and into the large drainage channel flowing to Martin Stream.

32. On November 1, 2006, staff of the ME DEP observed liquid pooling up and running out of the back of the “new” barn. This liquid was flowing into the drainage channel and into Martin Stream. The ME DEP inspector also observed many of the wall joints in the old lagoon leaking black liquid. This liquid was pooling and flowing towards the drainage channel.

33. On November 6, 2006, staff of the ME DEP observed manure-contaminated liquid adjacent to the “new” barn; the liquid manure flowed to the large drainage channel that flows to Martin Stream.

34. On November 15, 2006, staff of the ME DEP observed several locations at the old lagoon where liquid manure was flowing out of the lagoon and into the large drainage channel. The ME DEP inspector observed an ongoing discharge of manure from the east side of the “new” barn through a culvert into the large drainage channel. In addition, the ME DEP inspector noted that, across the road, 13 dead cows had been dumped in a silage storage area where liquid manure was being sprayed on to a field.

35. On November 17, 2006, staff of the ME DEP observed liquid manure leaking out from the walls of the old lagoon, and also overtopping the wall at several locations where the wall had been damaged. These discharges were flowing into the drainage channel. In addition, the ME DEP staff inspected an area near the road and downgradient of the silage storage area, where the 13 dead cows had been dumped by the Defendant. This field had also received several loads of manure on November 15, 2006. Liquid was flowing from this area, through a culvert under the road, and entering into Martin Stream.

36. On October 13, 2006, ME DEP issued a Notice of Violation (“NOV”) to the Defendant, alleging discharges of pollutants and/or manure to Martin Stream and the adjacent wetlands in violation of the Permit. The October 13, 2006 NOV requested that the Defendant take all measures necessary to prevent the discharge of pollutants to Martin Stream and to comply with all terms and conditions of the Permit.

37. After additional discharges to Martin Stream and the adjacent wetlands were observed on October 20 and 30, 2006, ME DEP issued another NOV to the Defendant on November 7, 2006. The November 7, 2006 NOV requested the Defendant, among other things, to: immediately take all measures to prevent the discharge of pollutants to Martin Stream; comply with the conditions of the Permit; immediately terminate the discharges of pollutants from the “new” barn to Martin Stream and the adjacent wetlands; remove all materials from the old lagoon by December 1, 2006; manage such removed materials in compliance with all applicable laws and rules; have the old manure lagoon inspected to determine its suitability for future manure storage and to report the results of this inspection by December 15, 2005; and to conduct any needed repairs on a schedule to be approved by ME DEP.

38. On November 16, 2006, the Maine DAFRR revoked Defendant’s provisional Livestock Operating Permit (“LOP”) due to failure to comply with the terms of the LOP, including the failure to implement a Nutrient Management Plan, failure to report manure spillages and discharges, and failure to dispose of dead animals in accordance with a carcass disposal plan. On December 26, 2006, the Deputy Commissioner of the Maine DAFRR denied Defendant’s appeal of the revocation of the LOP. Revocation of the LOP has been stayed pending Defendant’s further appeal.

39. On November 21, 2006, after observing continued flows of pollutants to the wetlands and Martin Stream, ME DEP issued a third NOV to the Defendant. The November 21, 2006 NOV requested the Defendant, among other things, to: immediately take all measures to prevent the discharge of pollutants to Martin Stream; comply with the conditions of the Permit; provide certain notifications and records required by the Permit; immediately terminate the

discharges of pollutants from the “new” barn to Martin Stream and the adjacent wetlands; remove all materials from the old manure lagoon by December 1, 2006; manage such removed materials in compliance with all applicable laws and rules; have the old manure lagoon inspected to determine its suitability for future manure storage and to report the results of this inspection by December 15, 2005; and to conduct any needed repairs on a schedule to be approved by ME DEP.

40. To date, the Defendant has not completed the removal of materials from the old lagoon in accordance with the NOVs issued by the ME DEP.

41. On December 7, 2006, EPA issued an Administrative Compliance Order (the “Order”) to the Defendant pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a).

42. The Order required the Defendant to immediately take any and all measures necessary to prevent the discharge of all process-generated wastewaters to Martin Stream and the adjacent wetlands; immediately take any and all measures necessary to prevent the discharge of any pollutants to Martin Stream and the adjacent wetlands, except in compliance with the terms of the Permit; and immediately terminate the discharge of process-generated wastes (including but not limited to solid manure and liquid manure) flowing from the “new” barn to Martin Stream and/or the adjacent wetlands.

43. The Order also required the Defendant to properly manage all liquid manure and other process-generated liquid wastes (including milk room wastes) in a manner that complies with the Permit and the Order; and prohibited the use of the new lagoon for liquid manure or

other liquid process-generated wastes until the lagoon, pump, piping and other parts of the manure transfer system are inspected and approved by the NRCS.

44. The Order further required the Defendant to take steps to insure that its actions would not exacerbate the CWA violations. These steps included submission of a Removal Plan by December 13, 2006 for: (i) removal and proper disposal of all materials from the old manure lagoon, in order to allow for a complete inspection of the old lagoon; and (ii) removal and proper disposal of sufficient liquid and materials from the new lagoon, so as to leave freeboard capacity for winter storage of manure generated by all cows expected to be at Defendant's farm until March 15, 2007. The Order specifically stated that due to Defendant's past failure to properly implement a Nutrient Management Plan, in accordance with the Permit, Defendant shall not be allowed to land apply liquid or solid manure, nor allowed to field stack solid manure.

45. As described in letters from EPA dated December 15, 21, and 29, 2006, the Removal Plans submitted by Defendant on December 14 and 20, 2006 were found to be deficient because the Removal Plans did not provide for proper removal and disposal of the liquid portion of the manure from the old lagoon. The plans included land application by the Defendant, and the Order specifically specified that the Defendant may not land apply liquid or solid manure. Further, the Defendant's Removal Plans did not propose a disposal location which would comply with all applicable laws, regulations and permits.

46. On December 27, 2006, inspectors for ME DEP and Maine DAFRR inspected Country Acres Farm, and observed that workers were pumping liquid wastes from the old lagoon into the new lagoon in violation of EPA's Administrative Order.

47. On January 4, 2007, representatives of ME DEP, ME DAFRR and the Natural Resources Conservation Service ("NRCS") of the U.S. Department of Agriculture observed a leak in the old lagoon and samples were taken of the liquid discharging from the old lagoon. The liquid was flowing out of the old lagoon at a rate of about 1/2 gallon per second (a rate of approximately 43,000 gallons/per day) to the large drainage channel that leads to the wetlands and Martin Stream. After these representatives pointed out this leak to representatives of the Defendant, they attempted to patch the leak by placing a plywood board on the inside of the lagoon; shortly thereafter another leak developed at a second gap between panels of the old lagoon, and plywood was placed over that gap as well. The plywood slowed, but did not stop, the flow of liquid from the old lagoon to the wetlands and drainage ditch.

48. Preliminary results of sampling taken on January 4, 2007 of the liquid discharging from the old lagoon show levels of BOD at 2500 milligrams/liter; TSS at 2100 milligrams/liter; ammonia at 470 milligrams/liter; and total phosphorus at 62 milligrams/liter. These results are representative of the liquid manure in the lagoon. Should a significant amount of this liquid waste reach the stream as a result of continuing leaks or overtopping of the lagoon, the impact on the fish population and macro-invertebrate community would be significant.

49. During the January 4, 2007 inspection of Defendant's farm, the representative from ME DEP measured the height of the manure in the old lagoon, and noted that the manure was approximately 9 1/2 inches from the top of the lagoon wall which is the usual measurement spot, but was 5 1/2 inches from the top where a portion of the lagoon wall had been damaged.

50. On January 4, 2007, representatives of ME DEP, ME DAFRR and NRCS also observed a pile approximately 100 feet long containing semi-liquid manure topped with waste

silage piled near a commodity storage bin on the east side of Route 7, adjacent to a drainage ditch that flows to Martin Stream. This pile constitutes “field stacking” of manure, which is not permitted under the Defendant’s Nutrient Management Plan.

51. On January 5, 2007, a representative of ME DAFRR again inspected Defendant’s farm, and noted that leakage was still occurring in the old lagoon. The DAFRR representative observed dark liquid material (manure-contaminated wastes) through most of the wetlands adjacent to the lagoon and flowing into the drainage ditch that flows to Martin Stream.

52. On January 8, 2007, representatives of ME DEP and ME DAFRR inspected Defendant’s farm, and measured the height of the manure in the old lagoon, and noted that the manure was approximately 7 inches from the top of the lagoon wall at the usual measurement spot, and was 3 inches from the top where a portion of the lagoon wall had been damaged.

53. On January 16, 2007, a representative of ME DEP inspected the height of the manure in the old lagoon, and noted that the manure was approximately 6 inches from the top of the lagoon wall fifteen feet from the usual measurement spot. The inspector also observed that fresh manure had been placed in the old lagoon.

54. As of January 16, 2007, Defendant had failed to maintain a sufficient amount of freeboard (one foot) in the old lagoon as required under the Defendant’s Permit.

55. Defendant continues to add milk room wastes to the old lagoon at a rate of approximately 1,500 - 2,000 gallons per day.

56. In the event of any significant rain or snow fall, manure and other process-generated wastewater, whether flowing from the old lagoon or the field-stacked solid manure and

silage on the opposite side of Route 7, would likely run off into Martin Stream, and associated wetlands.

CLAIMS FOR RELIEF

FIRST CLAIM – VIOLATIONS OF NPDES PERMIT

57. The United States realleges and incorporates by reference paragraphs 1 through 56 above.

58. Each discharge of liquid manure from the CAFO, which is a point source as defined by Section 502 (14) of the CWA, 33 U.S.C. § 1362 (14), into the adjacent wetlands, Martin Stream and channels and ditches connected to Martin Stream, constitute discharges of “process-generated wastewater” in violation of Special Condition A.1 of Defendant’s Permit, and of Section 301(a) of the CWA, 33 U.S.C. § 1311 (a).

59. From at least October 10, 2006 until the present, on numerous occasions Defendant violated terms and conditions of its NPDES permit, by among other things, discharging process-generated wastewaters to Martin Stream and adjacent wetlands which is also a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); failing to maintain sufficient freeboard in its manure storage lagoons; failing to notify ME DEP and ME DAFRR of discharges of process wastewater in accordance with Special Condition A. 3. of the Permit, and “field stacking” of manure which is not permitted under the Defendant’s Nutrient Management Plan.

60. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, the Defendant is subject to injunctive relief and the assessment of civil penalties not to exceed \$32,500 for violations occurring after March 15, 2004, for each day of each violation of the Permit and the CWA.

61. Unless enjoined Defendant will continue to violate the terms and conditions of its Permit, including but not limited to the discharge of process-generated wastewaters to Martin Stream and adjacent wetlands, and/or downstream navigable waters of the United States.

SECOND CLAIM – VIOLATIONS OF ADMINISTRATIVE ORDER

62. The United States realleges and incorporates by reference paragraphs 1 through 61 above.

63. The Defendant failed to comply with the requirements of the Order including but not limited to:

- a. continuing to discharge process-generated wastes and other pollutants to Martin Stream and the adjacent wetlands;
- b. submitting deficient Removal Plans; and
- c. transferring liquids from the old lagoon and pumping the liquids into the new lagoon.

64. From at least December 19, 2006 through the present, the Defendant has violated the Order issued pursuant to CWA Section 309(a), 33 U.S.C. § 1319(a).

65. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, the Defendant is subject to injunctive relief and the assessment of civil penalties not to exceed \$32,500 for violations occurring after March 15, 2004, for each day of each violation of the Order.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

1. Enjoin the Defendant from any and all ongoing and future violations of the Clean Water Act and the Order by ordering Defendant to comply with its Permit, the Order and the CWA;
2. Assess civil penalties not to exceed \$32,500 per day against the Defendant, as permitted by law, for each violation per day of its Permit and for each violation of the Order;
3. Award the United States its costs in this action; and
4. Award such other and further relief as is necessary to abate future unlawful discharges, and to ensure compliance with all terms and conditions of its Permit.

Respectfully submitted,

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